

## Future Activities

### Supreme Court Rules on EPA's New Ozone Standard

**T**he United States Supreme Court recently ruled on a challenge to the United States Environmental Protection Agency's (EPA's) authority to adopt ambient air quality standards (the concentration in the outdoor air at which a pollutant causes health or other environmental problems). In 1997, EPA adopted regulations which set the concentration for ground-level ozone at an 8-hour average of 0.08 parts per million (ppm). The new 8-hour ozone standard was meant to replace the existing 1-hour ozone standard in those areas of the country which complied with the 1-hour standard and co-exist with the 1-hour standard in those areas that did not meet the 1-hour standard. (EPA also specified a concentration for particulate matter at that time which was also challenged. Only ozone is being addressed in this section.)

Ground-level ozone should not be confused with the ozone layer in the stratosphere. Ground-level ozone is associated with smog and is a problem primarily found in large, metropolitan areas, though recent studies have demonstrated that ozone and some pollutants contributing to ozone formation in a particular area can come from hundreds of miles away. On the other hand, the ozone layer in the stratosphere reduces the amount of harmful ultraviolet rays reaching the earth's surface. The saying, "Good up high, bad near by," serves as a reminder that ozone in the stratosphere is beneficial while ozone near the ground is harmful.

EPA's regulations setting the new 8-hour ozone standard were challenged in the U.S. Court of Appeals for the District of Columbia (DC Court). Without deciding all issues brought

before it, the DC Court ruled that EPA relied upon an interpretation of the Clean Air Act that resulted in an unconstitutional delegation of legislative powers and remanded the standard to EPA for reconsideration. EPA appealed the DC Court's decision to the U.S. Supreme Court. In March of 2000, the Supreme Court reversed the DC Court.

The Supreme Court's decision included three major points: 1) that EPA's interpretation of the Clean Air Act was not unconstitutionally broad and that EPA had the authority to set the 8-hour standard; 2) that EPA did not have to include costs when setting an ambient air quality standard (cost is considered when implementing the standard); and 3) that EPA must provide additional justification for its reliance on Subpart 1 of Part D, Title I of the federal Clean Air Act instead of a Subpart 2, for purposes of implementing the 8-hour ozone standard.

The case will now go back to the DC Court which must issue a decision consistent with the Supreme Court's decision. The DC Court will also have to rule on those issues which it didn't decide when it ruled EPA's setting of the standard was unconstitutional. Exactly what issues must still be decided, whether the parties to the lawsuit will be required to file additional briefs, and whether the parties will be required to make oral arguments before the DC Court are still not clear. Once the DC Court issues its final ruling the matter will go back to EPA to repropose the standard in compliance with the DC Court's decision. With so many issues remaining, it appears the matter of EPA's proposed 8-hour standard is still far from being resolved.

The area of Kansas most directly affected by EPA's 8-hour ozone standard is the Kansas City area. Air monitors located in the Kansas City area have recorded violations of the proposed 8-hour ozone standard. In mid-2000, the governor of

each state was required to submit to EPA a recommendation regarding which areas of the state met the proposed standard and which didn't. Governor Graves recommended that all counties in Kansas, except Johnson and Wyandotte, be designated as "attainment/unclassifiable" for the proposed 8-hour standards. Johnson and Wyandotte counties, being part of the Kansas City metropolitan area, were recommended as not attaining the proposed 8-hour standard. EPA is considering whether to include Leavenworth County and Miami County as nonattainment since both are within the Kansas City MSA (metropolitan statistical area). EPA is required to discuss with the state any changes it proposes to the designations before EPA can finalize the designations. In addition, monitors in other areas of the state, such as the Wichita area, show that ozone concentrations are increasing and, if actions aren't taken to reduce ozone formation, will eventually exceed the proposed 8-hour ozone standard.

### Signature Building

On July 8, 1999, state and city leaders held a ground-breaking ceremony for the two year construction of the new Signature State Office Building at Tenth and Jackson Streets. Within this grand structure exists practical organization and modern construction techniques. The 300,000 square foot building stands five stories high with a full garden level and penthouse. It was constructed with cast-in-place concrete and 1,600 tons of reinforcing steel. The insulated Derbigum roof system, low-e glass windows, and state of the art mechanical and electrical controls with steam heat allow for quality environmental control.

The Kansas limestone cladding on the modern structure is

from Cottonwood Falls, Kansas, and blends in nicely with the historic design of the Statehouse and other buildings in the Capitol Complex.

It has been Governor Graves' goal to consolidate as many state agencies as possible into the downtown Topeka area, particularly the Capitol Complex. This will provide citizens with one place to stop for state business. The opening of the Signature Building in the summer of 2001 will help achieve Governor Graves' goal. The four agencies that will be located in the Signature State Office Building are the Kansas Department of Health and Environment, Department of Administration, Department of Commerce and Housing, and the Kansas Board of Regents.



Photo by: Doug Watson, KDHE

## Regional Planning and Cooperation

Historically, air pollution control programs evaluated air pollution on a county, multi-county or statewide basis. Today, Bureau of Air and Radiation staff are frequently called upon to evaluate air pollution issues on a regional or national basis. Pollutants such as ozone and fine particulate matter or their precursors can travel in the atmosphere for long distances, affecting people and the environment far removed from their origin. One example of the Bureau's regional approach to resolving air pollution is participation in a multi state group formed to address regional haze caused by fine particulate matter.

The Bureau represents the State of Kansas as a member of the Central States Regional Air Planning Association (CENRAP). The association has been established in response to a federal program to reduce visibility impairment in areas such as National Parks and Wilderness Areas. Kansas is working jointly with neighboring states to provide for the placement of additional monitors; develop a shared emission inventory; and, to conduct modeling to help identify strategies that will reduce the haze. These strategies will be incorporated into a State Implementation Plan (SIP) to be filed with the EPA.

The Bureau is currently in the phase of installing new monitors that collect data regarding the chemical make up of fine particles in the air. One monitor is to be installed at Cedar Bluff State Park and a second is planned for the Flint Hills region of east central Kansas. The Sac and Fox Nation of Missouri located in Northeast Kansas are also planning to operate a monitor on tribal land near the Nebraska border. The monitoring data from these and other sites will be used to ensure the computer models are accurately predicting pollutant levels.

Bureau staff are also working with other members of CENRAP to determine what emission inventory information will be required for input into the model. This information will be gathered from industrial sources or developed by reviewing population, vehicle miles traveled and other surrogates for non-industrial emissions. The type of computer model to be used and the necessary inputs for the model will be reviewed to ensure sufficient time to gather the information. The monitoring, emission inventory, and modeling activities will take place over the next two to three years. The final step will be to determine appropriate strategies for pollution control and incorporate them into a SIP for submission to EPA. It is expected that the joint effort underway to address the regional haze issue will serve as a model for addressing future air pollution problems that cross state and international borders.

## Public Education

The Bureau is continuing to expand public education efforts, particularly in those areas with the greatest potential to have problems meeting the standards. If a city fails to meet the standards, public awareness of the ways we all contribute to air pollution is critical. Many voluntary efforts aimed toward vehicle maintenance, use of public transportation systems, and other relatively simple changes can lead to air quality improvements. Before these can be successfully implemented, the public needs to recognize the role they play in creating pollution and the ways they can help prevent it. The Bureau is developing posters to distribute to schools, businesses and other groups to spread this message. In addition, the bureau is in the process of updating the web site to include a broad range of topics regarding causes of air pollution, air pollutant levels in the state, and steps the public can take to minimize those levels. Anyone wishing to receive additional copies of this report or air quality posters for distribution should contact the Bureau at (785) 296-6024.